Proceedings

In Relation to the TRYAL

OF

EDWARD FITZ-HARRIS,

At the *Kings-Bench*-Bar in *Westminster-Hall*,

Who stands INDICTED

FOR

High-TREASON,

Which Proceedings were on *Wednesday* the 4th. and *Saturday* the 7th of this Instant *May*, 1684.

For that he by several Hellish and Diabolick Practices, endeavoured to compass the Death of His most Sacred Majesty, and to Subvert the Government.

With the Account of the Substance of his Plea, and the most Remarkable Circumstances that happened during the Debates on either side.

ON the 4th of this Instant, about 9 in the Morning, *Edward Fitz-Harris* was brought from the Tower by Water, strongly Guarded to the *Kings-Bench*-Barr in *Westminster-Hall*; where being demanded what he would plead, he delivered his Plea which was ready drawn up in Writing to the Court, and prayed that it might be Read, which was Granted; but before the Reading of it, one of the Counsel for the Prisoner stood up, and desired that he might be heard a few words, which were

to this purpose, *That they had endeavoured what in them lay to draw up their Plea to agree with the Law in all points*: And farther, *That they had taken a view of the Journals of the Lords house, and the Entrys of the House of Commons, to extract from them what was material in the behalf of the Prisoner*, and found the Plea was such, as could not be [illegible], and therefore prayed that it might be Read and Accepted.

After which, the Plea was audibly Read, the substance of which was, *That Edward Fitz-Harris the Prisoner at the Bar, having been Arraigned at the Bar of the Kings Bench, Queening the House of Commons, and there put in jeopardy of his Life, he the said [illegible] ought not to be now Arraigned for one and the same Treason, and Plea in any Court then that where he was first Arraigned*, &c. referring the rest to a Record that was pretended to be in the Lords House.

Upon the Reading of his Plea, Mr. *Attorney General* refus'd to accept of it, alledging it was not only nought, but altogether frivolous, being drawn up on purpose to Question the Jurisdiction and power of the Court as to the Tryal of the Prisoner, and to gain time by delay: And farther, That he had not had such time to consider of the said Plea, as he ought, by reason he did not receive it before 4 of the clock the Night before. To the last it was answered, *That some of the People that looked to the* Lords House *were out of Town, so that they could not without much difficulty procure such Papers as were Material in the behalf of the Prisoner, and therefore hoped that that would not hinder them to be admitted to their Plea*, &c.

When one of the Counsel for the King standing up, made answer, That the Plea was altogether frivolous, and contrived for delay to gain some advantage on the behalf of the Prisoner, for at that time they rather ought to have pleaded to the Matter of Fact, than at all to question the Jurisdiction of the Court. As to the Tryal of the prisoner, when all the Judges had unanimously declared, That it was in their power to Try him, notwithstanding his being Impeached by the Commons; And farther, That the Plea mentioned only Treason in general, but named no particular Treason, which they ought to have done, that they might the better have

have known how to have given them an Answer. And for Objections according to Law which by reason of the Examination of Treason in general, they could not do, not knowing whether the Treason to be mentioned in the Indictment was Levying War, which he stands impeached by the Commons, and if so, then it is a Point of Law must come to be Queried, and they must come to Matter of Fact.

As to a Record said to be in the House of Lords, it was not mentioned what Record, the which had it been material would be produced that there was no such Record belonging to the Prisoner.

After these and several other learned objections against the Plea, Mr. *Attorney General* thought fit to demur to it, which with the consent of the Kings Counsel he did pray and desired that the others also would joyn in demurrer, which they accordingly did, but prayed a considerable time might be granted to make preparation for Answer, considering the Life of a Man was concerned in it, but that was strongly opposed by the Kings Council, who pleaded that in this Case delays were dangerous, and that they had had four Days already to consider on it, and that it was so foul a Treason, that if the Prisoner was Guilty of it, he ought to have no favour or mercy shew'd him, and that his Life ought to be destroyed seeing he endeavoured to take away the Life of the Government.

The Counsel for the prisoner laboured to prove that it was usual to give time in such Cases, and cited two Presidents, but were over ruled in both: by Reason they were only Indicted for Misdemeanours, and the prisoner for the Capitall Crime that the Law makes mension of. Then they objected that *Plunket* had time given him till the next Term, but in that likewise they were over-ruled. My Lord Chief Justice informed them, that he was Indicted for Treason in another Kingdom, and that his Witnesses being there, he could not possibly get them over before the Term would be expired. So that in conclusion, the prisoner had till *Saturday* Morning allowed him to prepare for his Tryal; when about 8 of the Clock he was brought to the Bar.

When

When Mr. *Attorney General* gave the Court an account what was done had not Counsel shewing the Insufficiency of the Plea, and that it was drawn up on purpose to endeavour to usurp the Jurisdiction of this Court, which [illegible] to keep from encroachment: That the Power of that Court was [illegible] to the Trial of the prisoner notwithstanding [illegible] lodged in the House of Commons; nor could [illegible] as to matter of Fact; to which Counsel [illegible] pleaded that the prisoner being Impeached by the Commons of England for the crimes of themselves, and in the name of all the Commons of England. No Inferiour Court ought to [illegible] the Trial, that is to take it out of the hands of the highest Court of this Kingdom, the which the Lords and Commons [illegible] declaring, that such things had been formerly done but that they proved of Fatal Consequence to those Judges who gave Judgement in such case, for [illegible] and knowledges of *Parliaments*, which ought not to be [illegible] with the Grandeur of the Nation, that such Judgements [illegible] made at this time, but did confess that the [illegible] in the House of Lords as had been formerly [illegible], [illegible] an Impeachment was much as the nature of an *Appeal*, where the Son and the Wife of any murdered person might bring their *Appeal*, and notwithstanding the murderer had [illegible] acquitted or [illegible] pardoned. And that an *Impeachment* [illegible] Suit of the King but at the Suit of the People, and that all the people of *England*, viz. the Commons are his Accusers; and therefore the Jury and Judges upon the Bench being Commons of *England*, they could not for how they could undertake to Try him, but that he ought to be Tryed before the Lords in Parliament, they being the [illegible] Judges to determine any matter at the Suit of the people, that is, [illegible] of the *Impeachment*: In Order to confirm which, many Precedents and Antient Records were Cited, especially the Case of the Earl of *Salisbury*, who being Committed by Parliament for High Misdemeanour, he moved at the *Kings-Bench-Bar*, that he might be brought thither by *Habeas Corpus* and Bailed, but it was refused him by the Judges then Sitting; declaring they would not meddle in that Case, by reason he was Committed by Parliament, during the pleasure of the King and House of Lords.

To these and many more, the Kings Counsel very learnedly replyed, and stated their Objections to each particular point, saying, That no Impeachments lodged in the House of Commons could hinder the proceedings of an Inferiour Court, for if so, the Justice of all Inferiour Courts be incroached upon, and in time be much streightned and confined within narrow limits; and notwithstanding all the Prisoners Counsel had said it was absolutely in their Power to Try him; and that the nature of an Appeal was different from that of an Impeachment. And farther, since they had allowed, That the Commons are the Grand Inquest of the Nation, whether or no they had not made this Prefeatment for the King? and if so, the Prisoner without any more ado might be Tryed at the Kings Suit, and therefore prayed the Court that the Plea might be over-ruled.

To which the Court was pleased to Answer, That notwithstanding all that Counsel had said, they were fully satisfied that they had power to Try the Prisoner as to Matter of Fact, notwithstanding the Impeachment of the Commons, that they intended to proceed according to Law, and had not any thing to do with Matters in Parliament, but this Treason being committed out of Parliament, and the Criminal brought before them, they ought to do Justice, but would not be hasty on them, but would give them yet longer time, by reason it was a matter of weight and moment; and therefore ordered the Lieutenants Deputy to carry back his Prisoner. *Finis.*

Printed for J. Millet, in the Year 1681.

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